25.7.2006 Present: Mr. M.S.Guleria, counsel for the petitioners.
Mr.Rajan Diwan, Addl.A.G. for the State.

CrMP (M) Nos. 449, 450 & 451 of 2006.

This order shall dispose of three bail applications as they relate to the same offence and the same questions are involved in all the three cases.

The petitioners were arrested in FIR No.292/2004 registered under Section 147, 148, 302, 307 read with Section 149 IPC and read with Section 25 of the Arms Act along with Section 149 IPC at Police Station, Balh District Mandi. H.P.

Out of the same incident cross case under Section 148, 323, 324, 326, 405, 506 and 307 IPC read with Section 147 IPC was registered against the complainant party at the instance of the present petitioners-accused.

The charges were framed against the petitioners and prosecution evidence was recorded against them. The statement of Sadiq Mohammed (PW1) was recorded on 22.8.2005. The said witness while making the statement in addition to naming the accused also named Dil Khursheed and Sabina as being members of the party which was armed with Dandas who had attacked Nazir Hussain, Sarwar Hussain and Talib Hussain. Despite this statement having been made on 22.8.2006, the prosecution did not deem it fit to move an application for impleading Smt. Dil Khursheed and Ms.Sabina as co-accused till as late as December, 2005. This application remained

pending before the trial Court and was finally allowed by it on 29.5.2006 and the two newly added accused were ordered to be summoned for 14.6.2006. It would be pertinent to mention that prior to the filing of this application in August, 2005 itself as many as 13 witnesses have been recorded. Now all the witnesses will have to be examined all over again so that the newly added accused persons have an opportunity to cross-examine the said witnesses.

It is the fundamental right of other accused to have a speedy trial. In the present case, I find that this right has been violated by the prosecution itself. Though the statements of 13 witnesses had been recorded between 21.8.2005 to 25.8.2005, the learned Assistant Public Prosecutor for reasons best known to him did not move any application for impleading the co-accused till December, 2005. The said application also remained pending in this Court for almost 6 months. The present petitioners have virtually faced the full trial and they cannot be forced to stay on in Jail merely because the prosecution did not implead all the accused at the initial stage and now after most of the evidence has been recorded some more persons are to be impleaded as accused.

No doubt, in the present case, the accused are charged with a heinous offence. Normally, in such like cases, bail is not granted easily. However, in the present case, the

petitioners have been behind bars for more than 1 year and 8 months. The trial should have been completed by now. It is not the case of the prosecution that the trial has prolonged due to the fault of the petitioners. Every accused has a fundamental right of speedy trial. In case the prosecution or the Court cannot provide speedy trial then the accused have the right to approach the Court for grant of bail. No accused can be kept behind bars for an indefinitely long period because the trial has not been completed for no fault on his part.

The petitioners are admittedly permanent residents of the area in question. There is virtually no chance of their influencing the witnesses since the prosecution witnesses have already been examined and cross-examined by them. Further, most of the prosecution witnesses are the accused in the cross case filed at the instance of the petitioners and as such they would not be influenced by the petitioners.

Keeping in view the aforesaid facts, I feel that it is a fit and proper case where the petitioners should be enlarged on bail. It is, therefore, ordered that the petitioners shall be released on bail on their furnishing personal bail bonds in the sum of Rs.50,000/- each with one surety each in the like amount to the satisfaction of the trial Court.

This bail is granted subject to the condition that the petitioners shall not try to influence the prosecution witnesses.

The petitioners shall appear on each and every date fixed before the trial Court and in case they do not appear before the trial Court without reasonable cause or the trial is delayed due to their non-appearance, the State-respondent shall be at liberty to approach this Court for cancellation of their bail.

The application is allowed and disposed of in the aforesaid terms. Dasti copy.

July 25, 2006. (Deepak Gupta), J.
s.